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POWERS OF SUPERIOR COURTS TO PASS REMARKS AGAINST SUBORDINATE COURTS: A STUDY IN THE LIGHT OF AMAR PAL SINGH'S CASE^E

—Prof. (Dr.) Mukund Sarda*

1. Several instances had occurred in the past, where the Superior Courts had passed severe strictures and derogatory remarks against the subordinate courts. They were not only against the principles laid down by the Apex Court but also not in accord with judicial decorum and propriety, inspite of the fact that in adjudicating upon the rival claims brought before the courts, it is not always easy to decide, where the truth lies.¹
2. Section 482 of the Criminal Procedure, 1973² provides thus :—
“Nothing in this code shall be deemed to limit or affect the inherent powers of the High Court to make such orders, as may be necessary to give effect to any order under this code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice”

By virtue of the inherent powers, under Section 482 Cr. Pc. the Judges and Magistrate have full liberty to discuss the conduct of

Amar Pal Singh Vs. State of UP & Another, Air 2012 Sc P.1995.
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1. *Ishwari Prasad Mishra Vs. Mohd. Isa*, AIR 1963 SC P.1728.
2. Criminal Procedure Code hereinafter referred to as Cr. Pc.

persons before them but they should be very zealous in guarding the independence of the Magistrates and Judges and Subordinate Courts. It should act as an encouragement to subordinate courts that they can fearlessly give expression of their opinion in their orders and Judgements which they deliver. However, the courts should observe the *triple principle* laid down in *S. Yadav's case*³ which states thus:—

- (i) No person should be condemned without being heard;
- (ii) In making his criticism the Magistrate or Judge should not travel beyond the record; and
- (iii) The criticism should be made with sobriety and due sense of responsibility.

The Supreme Court laid down as follows:—⁴

- (i) Evidence is adduced in support of their conflicting contentions and circumstances which are pressed into service;
- (ii) It is the duty of the Judges to consider the evidence objectively and dispassionately examine it, in the light of probabilities and decide which way the truth lies;
- (iii) The impression formed by the Judge about the character evidence will ultimately determine the conclusion which he reaches;
- (iv) It would be unsafe to over-look the fact that all judicial minds may not react in the same way to the said evidence as it is not unusual that evidence which appears to be respectable and trust-worthy to one Judge may not appear to be so to another Judge;

This is why, the appellate or revisional/review courts reverse conclusions of facts recorded by the trial court on its appreciation of evidence;

- (v) The knowledge that another view is possible on the evidence adduced in a case acts as a sobering factor and leads to the use of temperate language in recording judicial conclusions;

3. (1963) Rajasthan, P.886.

4. AIR 1963 SC P.1728.

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(vi) Judicial approach in the above case would always be based on the consciousness that one may make a mistake. That is why the use of unduly strong intemperate or extravagant criticism against the contrary view, which are often founded on a sense of infallibility should always be avoided; and

(vii) The emphasis should be laid on sobriety, judicial poise and balance.

3. In *Alok Kumar's Roy case*,⁵ the Supreme Court further laid down as follows:—

(i) it is necessary to emphasise that judicial decorum has to be maintained at all times, and even where criticism is justified, it must be in a language of utmost restraint, keeping always in view that a person making the comment is also fallible; and

(ii) Even there is jurisdiction for criticism, the language should be dignified and restrained.

4. While exercising control over subordinate judiciary under Article 235 of the Constitution of India, the High Court is under a Constitutional obligation to guide and protect subordinate judicial officers. This was held in *Ishward Chand Jain's case*.⁶

5. The Apex Court in *K.P. Tiwari's case* further laid down:⁷

(i) One of the functions of the High Court is either to modify or set aside erroneous order passed by the lower courts;

(ii) A Judge tries to discharge his duties to the best of his capacity. While doing so, sometimes he is likely to err. Sometimes the difference in views of higher and subordinate judiciary is purely a result of a difference in approach and perception. In such cases, the lower courts are not necessarily wrong, the higher courts always right;

(iii) Lower courts do not have the benefit of a detached atmosphere of the higher courts to think coolly and decide

5. *Alok Kumar Roy Vs. Dr. S.N. Sarma and Another*, AIR 1968, SC P.453.

6. *Ishwar Chand Jain Vs. High Court of Haryana and Punjab & Another*, AIR 1988 SC P.1395.

7. *K.P. Tiwari Vs. State of UP*, AIR 1994, SC P.1031.

patently every error should not be attributed to improper motive;

- (iv) Even where a Judicial Officer is consistently passing order, creating suspicion of judicial conduct, which is not wholly or partly attributable to innocent functioning, the proper course for higher courts to adopt, is to make note of his conduct in the confidential record of his work and use it on proper occasions;
- (v) High Courts have a duty to ensure judicial discipline and respect for judiciary from all concerned;
- (vi) The respect for judiciary is not enhanced when Judges at the lower level are criticised intemperately and castigated publicly;
- (vii) No greater damage can be done to the administration of justice and to the confidence of the people in the higher judiciary, when the Judges of the higher courts publicly express lack of faith in the subordinate Judge for one reason or the other; and
- (viii) Officers against whom such structures are passed publicly, stand condemned even in the eyes of the public. No better device can be found to destroy the judiciary from within. The Judges, must exercise self-restraint; and there are ways and ways of expressing disapproval of the orders of the subordinate courts but attributing motives to them is the surest way to take the judiciary down-hill.

6. In *Kashinath Roy's case*,⁸ the supreme ruled :—

- (i) Appellate and revisional courts are set up with the pre-supposition that lower courts in some measure of cases can go wrong in decision-making and the superior court's power to correct errors should be in a fitting manner maintaining the dignity of the courts and independence of judiciary ; and
- (ii) It is the obligation of High Court to convey the message in the Judgement to the officers concerned through a process of reasoning, essentially persuasive, reasonable, mellow but clear result-oriented and *rarely a rebuke*.

8. *Kashinath Roy Vs. State of Bihar*, AIR 1991, SC P.3240.

7. Dealing with respect for judiciary, the Apex Court held that 'it is not in hands by using intemperate language and by casting aspersions against the lower courts.'⁹
8. The Apex Court laid immense emphasis on the need for judicial restraint and discipline. In *A.M.Mathur's case*,¹⁰ the Apex Court observed as follows:—
 - (i) Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army;
 - (ii) The duty of restraint, this humility of function shall be a constant theme of our Judges,
 - (iii) The quality in decision-making is as much necessary for Judges to command respect, as to protect the independence of judiciary;
 - (iv) Judicial restraint in this regard might be better called 'judicial respect' i.e., respect by the judiciary; and
 - (v) Judicial respect – respect to those who come before the courts as well as to the other co-ordinate before the court as well as to other co-ordinate branches of the State – the executive and legislature. When these qualities fail or when litigants and public believe that the Judge has failed in these qualities, it will be neither good for the Judge nor for the judicial process.
9. Dealing with the powers of the court to expunge remarks, the Apex Court in *Re K, a Judicial Officer*¹¹ ruled thus:—
 - (i) The over-all test is that the criticism or observation must be judicial in nature; and
 - (ii) It should not formally depart from and sobriety, moderation and reserve.

The criticism made and observation concerning subordinate Judges, which is incorporated in judicial pronouncements have several mischievous infirmities and violations of natural justice. As

9. *Broj Kishore Thakur Vs. Union of India*, AIR 1997, SC P.1157.

10. *A.M.Mathur Vs. Pramod Kumar Gupta*, AIR 1990 SC P.1737.

11. In *Re K Judicial Officer*, AIR 2001 SC P.1972 also refer to the case of *State of UP Vs. Mohd Naim*, AIR 1964, SC P.703.

pointed out by the Apex Court,¹² they be summarised as follows :—

- (i) The Judicial Officer concerned is uncondemned unheard. Thus, there is a gross violation of natural justice;
- (ii) The harm caused by such criticism cannot be removed on the administrative side, since it continues to be on record and goes against the career of the official concerned;
- (iii) Even the Judge who made the criticism cannot remove it on the administrative side while dealing with it;
- (iv) Criticism of a Judicial Officer gives the litigant party not only over the opponent, but over a Judge who had decided the case against him. This is subversive of judicial authority of the deciding Judge; and
- (v) Petition filed to expunge the remarks makes the status of a Judge that of a litigant arrayed as a party before Supreme Court or High Court, a situation which cannot be considered as 'a happy one' from the point of view of the functioning of judicial system.

The Supreme Court dealt with several cases, wherein it has expunged the remarks which were totally inappropriate.¹³

The expression used against the Judgement of High Court must in keeping with dignity of the person concerned.¹⁴

10. In conclusion, it may be stated :—

- (i) Credibility of judiciary cannot be divorced from independence of judiciary. One without the other cannot exist. Therefore, to maintain the independence of judiciary its credibility is equally important;
- (ii) Rule of law which promotes equality before law and equal protection of laws is grossly violated when unwarranted criticisms are made against the Judge, in as much as he has no opportunity to defend against such remarks. There is erosion of rule of law;

12. *Ibid.*

13. *Samya Setti Vs. Shambu Sarkar*, AIR 2005 SC P.3309 also see *State of M.P. Vs. Nandlal Jaiswal & Others*, AIR 1987, SC P.251.

14. *State of Bihar Vs. Nilmani Sahu & Others* (1999)9 SCC P.211.

- (iii) Any erroneous decision can be corrected by superior courts by the exercise of jurisdiction vested in them like appellate, revisional or review. These powers are enough to deal with errors in the Judgement or correcting the course of justice or preventing injustices;
- (iv) The superior courts should act as instruments to guide and protect the subordinate judiciary by framing suitable guidelines and the need to make derogatory or unwarranted remarks should be avoided;
- (v) Superior courts should practice the knowledge and experience gathered in dealing with subordinate courts, as goes a proverb 'practice is better than precept'; and
- (vi) Code of conduct for Judicial Officers should be framed as to bring about judicial discipline, judicial respect, qualities of impartiality and adoption of proper motives in the approaches to cases which may merit public appreciation, besides appreciation by superior judiciary.

Para 10 : *It may be appropriate to amend Section 482 of Cr.Pc. to the following effect—*

482(I) *Notwithstanding anything contained in the Criminal Procedure Code or any other law for the time-being in force, no superior court can pass any unwarranted or derogatory remarks against the subordinate judiciary."*

492(II) *Nothing contained in the above provision should give immunity for being dealt with by way of disciplinary action for any act of misconduct or misbehaviour committed by a Judge or officer of subordinate judiciary.*

The Superior courts shall have jurisdiction to initiate appropriate action against the officer concerned.

482 (III) *For prosecutions under criminal law, it may be dealt with in accordance with law.*

11. The proper course in cases of gross misconduct or misbehaviour or cases of injustices meted out to any person, the superior courts may note such instances or conduct in the confidential record of

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the officer concerned to be dealt with, when such a record can be taken into account in specific cases. Departmental punishments may be better than public criticism in Judgements, or unwarranted or disparaging remarks against the members of subordinate judiciary. This will go a long way in strengthening the cause of independence of judiciary and its credibility in the eyes of the public.

* * *